04-26-04 IFW AF/3679

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	: Examiner:
HARRY W. EBERLE III	: ERNESTO GARCIA
Serial No. 10/037,325	: Group Art Unit: 3679
Filing Date: January 3, 2002	: Attorney Docket No.:
For: DECKING SYSTEM AND ANCHORING DEVICE	: HWE-107A

Director of Patents and Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF TRANSMITTAL

Pertaining to the above, enclosed is an original Appeal Brief, plus two copies.

Also enclosed is the check for filing this Appeal Brief.

Date: April 23, 2004

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(HWE-107A)

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APPEAL BRIEF

This brief is being filed in response to the Final Rejection of December 24, 2003 in the above-referenced case.

I. REAL PARTY IN INTEREST

The inventor of the instant patent application is Harry W. Eberle, III. He is the real party in interest in this matter.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals and no related interferences pertaining to this case.

III. STATUS OF CLAIMS

The following is a list of claims that have been presented in this matter throughout its history, and the status of those claims:

Claims	Status
1-20	Originally filed; subject to restriction requirement; claims 1 through 10 were elected, all are now cancelled.
21-28	Pending, under Final Rejection, these are appealed herein. These are presented in Exhibit A attached hereto.

IV. STATUS OF AMENDMENTS

No Amendments were filed after the Final Rejection.

V. SUMMARY OF THE INVENTION

In conjunction herewith, Figure 4 is appended hereto as Exhibit B. The invention is an anchoring device used to simultaneously anchor adjacent boards to a joist or other support. The device (1) has a top element (2) with a flat horizontal top surface, with a first predetermined maximum width W_T (width-top). There is an imaginary center line through the top element (2). There is a vertical support member (4) extending downwardly from the top element (2). This vertical support member (4) has a second

predetermined maximum width W_M (width middle). Below the vertical support member (4) is a bottom element (6) that has a trapezoidal shape with a flat bottom. Bottom element (6) has a predetermined maximum width W_B (width-bottom). A critical feature of the present invention is the flat bottom, as it rests on a joist or other beam, and boards with slits or cuts are slid onto the left and right portions of the top element (2). The trapezoidal side profile of the bottom element provides a low, tapered edge for the particular boards that are used with this device (typically, custom extruded synthetic decking with rounded edges). Another critical feature of the present invention device is the relationships of the widths of the various elements of the device. It is critical that the width W_T of the top element (2) be greater than both the width W_M of the support element (4) and the width W_B of the bottom element (6). Furthermore, the width of the bottom element (6) is required to be greater than the width of the support element (4). In other words, the top is the widest, the middle is the narrowest, and the bottom width is less than the top and greater than the middle. Without these critical features structurally set forth in all appealed claims, the device will not function for its intended purpose.

VI. ISSUES

Th basic issues in this appeal are as follows:

(a) Are claims 21, 24 and 27 fully anticipated under 35 U.S.C. 102 (b) by the Zibell patent? Is the examiner correct in relying upon Zibell to fully anticipate all elements and limitations of claims 21, 24 and 27 when Zibell fails to show a flat bottom, as claimed, and fails to show a bottom with a maximum width that is greater than the maximum

width of the center support member between the top and bottom? Is the use of Zibell appropriate as an anticipatory reference regarding claims 24 and 27, when none of the decking system claimed limitations are set forth in Zibell?

(b) Are claims 22, 23, 25, 26 and 28 rendered obvious under 35 U.S.C. 103 (a) by the Zibell patent? Is the examiner correct in relying upon Zibell to render obvious all elements and limitations of these claims when Zibell fails to show a flat bottom, as claimed, and fails to show a bottom with a maximum width that is greater than the maximum width of the center support member between the top and bottom, fails to show a plurality of recesses and support columns, and has no teachings whatsoever regarding decking systems ?

VII. GROUPING OF CLAIMS

Claims 21 through 23 are directed to an anchoring device, and represent one group. Claims 24 through 28 are directed to a decking system requiring an anchoring device and boards, and represent a second group.

VIII. ARGUMENTS

A. REJECTION OF CLAIMS 21, 24 AND 27 UNDER 35 U.S.C. 102 (b) UNDER THE ZIBELL PATENT

The reference to Zibell is directed to an anchoring system for the installation of slabs on vertical and overhead surfaces. It is not directed to decking systems and does

not anchor boards atop joists to form a deck.. The Zibell system is complex and involves metal clamps, screws bolts and, as shown in Zibell's Figures 1 through 5, requires as many as five or six parts to set up a vertical slab.

Zibell discloses an extended anchoring clip in Figures 9 through 11. (Although the examiner has adopted Figure 11 for his rejection, the clip is clearly shown in its detail in Zibell's Figure 9). The Zibell clip has a wide top, a center having a flat portion, a fluted portion, and a narrow portion. The Zibell clip also has a bottom that has a "v" shaped base and is the same width and length as the fluted portion of the center.

The present invention device specifically requires a top element with a flat horizontal top surface, with a first predetermined width W_T (width-top). The Zibell clip has this. The present invention also includes a vertical support member extending downwardly from the top element. This present invention vertical support member has a second predetermined maximum width W_M (width middle) that is less than the maximum predetermined with of the top and of the bottom. Below the vertical support member of the present invention device is a bottom element that has a trapezoidal shape with a flat bottom. This bottom element has a predetermined maximum width W_B (width-bottom). A critical feature of the present invention is the flat bottom, because it rests on a joist or other beam, and boards with slits or cuts are slid onto the left and right portions of the top element. The trapezoidal bottom element provides a low, tapered edge for the particular boards that are used with this device (typically, custom extruded synthetic decking with rounded edges). Another critical feature of the present invention device is the relationships of the widths of the various elements of the device. It is critical that the width W_T of the top element be greater than both the width W_M of the

support element and the width W_B of the bottom element. Equally critical, the maximum width of the bottom element is required to be greater than the maximum width of the center support element. Without these critical features structurally set forth in all appealed claims, the device will not function for its intended purpose.

Zibell's clip does not have a flat bottom.

Zibell's clip does not have a bottom with maximum width greater than the maximum width of the center. In fact, Zibell's clip maximum center width and maximum bottom width are identical. Further, the examiner has taken the center section of Zibell and distorted it by calling the center ass the bottom. But it is not the bottom. Even if it were, it has a downward protrusion, and is, therefore, not flat. The claims must be taken in light of the disclosure and the examiner is clearly not doing that here. The distortions attempted by the examiner are inconsistent with both Zibell and the present invention as claimed.

Additionally, claims 24 and 27 are directed to a decking system requiring a plurality of boards with at least one groove along one side of each of the boards for fittage with the anchor. Zibell has no such boards, but instead has vertical slabs. Also, the functional language to show the relationship between the boards and the anchor as claimed herein, is lacking in Zibell. Specifically, the anchoring device is adapted to maintain the top element in a predetermined position during use for joinder of two adjacent boards which have been pre-cut with receiving slots, and to position the bottom element upon a support board which the two adjacent boards rest for attachment of the anchoring device to the support board for anchoring and support of the two adjacent boards.

For all of these reasons, Zibell lacks critical features of the present invention as claimed and cannot possibly anticipate claims 21, 24 and 27. This rejection should not be sustained.

B. REJECTION OF CLAIMS 22, 23, 25, 26 AND 28 UNDER 35 U.S.C. 103 (a) UNDER THE ZIBELL PATENT

As mentioned above, the reference to Zibell is directed to an anchoring system for the installation of slabs on vertical and overhead surfaces. It is not directed to decking systems and does not anchor boards atop joists to form a deck.. The Zibell system is complex and involves metal clamps, screws bolts and, as shown in Zibell's Figures 1 through 5, requires as many as five or six parts to set up a vertical slab.

Zibell discloses an extended anchoring clip in Figures 9 through 11. (Although the examiner has adopted Figure 11 for his rejection, the clip is clearly shown in its detail in Zibell's Figure 9). The Zibell clip has a wide top, a center having a flat portion, a fluted portion, and a narrow portion. The Zibell clip also has a bottom that has a "v" shaped base and is the same width and length as the fluted portion of the center.

The present invention device specifically requires a top element with a flat horizontal top surface, with a first predetermined width W_T (width-top). The Zibell clip has this. The present invention also includes a vertical support member extending downwardly from the top element. This present invention vertical support member has a second predetermined maximum width W_M (width middle) that is less than the maximum predetermined with of the top and of the bottom. Below the vertical support

member of the present invention device is a bottom element that has a trapezoidal shape with a flat bottom. This bottom element has a predetermined maximum width W_B (width-bottom). A critical feature of the present invention is the flat bottom, because it rests on a joist or other beam, and boards with slits or cuts are slid onto the left and right portions of the top element. The trapezoidal bottom element provides a low, tapered edge for the particular boards that are used with this device (typically, custom extruded synthetic decking with rounded edges). Another critical feature of the present invention device is the relationships of the widths of the various elements of the device. It is critical that the width W_T of the top element be greater than both the width W_M of the support element and the width W_B of the bottom element. Equally critical, the maximum width of the bottom element is required to be greater than the maximum width of the center support element. Without these critical features structurally set forth in all appealed claims, the device will not function for its intended purpose.

Zibell's clip does not have a flat bottom.

Zibell's clip does not have a bottom with maximum width greater than the maximum width of the center. In fact, Zibell's clip maximum center width and maximum bottom width are identical. Further, the examiner has taken the center section of Zibell and distorted it by calling the center ass the bottom. But it is not the bottom. Even if it were, it has a downward protrusion. It is, therefore, not flat.

The claims must be taken in light of the disclosure and the examiner is clearly not doing that here. The distortions attempted by the examiner are inconsistent with both Zibell and the present invention as claimed. Not only are these limitations not taught, they are not suggested nor are they obvious in view of Zibell, because Zibell is directed

to different devices for different purposes. One of ordinary skill in the decking art or even in a broad anchor fastening art, would not modify the Zibell clip to make the present invention device as claimed. Likewise, he would not find the present invention obvious in view of Zibell.

Additionally, claims 25, 26 and 28 are directed to a decking system requiring a plurality of boards with at least one groove along one side of each of the boards for fittage with the anchor. Zibell has no such boards, but instead has vertical slabs. Also, the functional language to show the relationship between the boards and the anchor as claimed herein, is lacking in Zibell. Specifically, the anchoring device is adapted to maintain the top element in a predetermined position during use for joinder of two adjacent boards which have been pre-cut with receiving slots, and to position the bottom element upon a support board which the two adjacent boards rest for attachment of the anchoring device to the support board for anchoring and support of the two adjacent boards. Zibell does not teach the limitations or suggest or render obvious the limitations in the main claim nor of these independent claims. The anchor component is not taught or suggested nor are the boards and their relationships to the anchor component.

For all of these reasons, Zibell lacks critical features of the present invention, lacks any suggestion of modification, shows no need to change, and it is only in hindsight that these claimed devices of the present invention are asserted to be obvious by Zibell. This rejection should not be sustained.

IX. IN CONCLUSION

Based on the above arguments, none of the claims 21 through 28 should be rejected under 35 U.S.C. 102 (b) or 35 U.S.C. 103 (a) based on the Zibell patnet. The examiner's rejections should be reversed. Thank you.

Respectfully submitted,

Date: April 6, 2004

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(Docket No. HWE-107A)

EXHIBIT A

21. An anchoring device for joining three boards, which comprises:

(a) a substantially flat horizontal top element having a top view configuration which includes two sides and has a first predetermined width as measured side to side, said first predetermined width being measured at a maximum width between said two sides, said top element having an imaginary center line;

(b) at least one substantially vertical support member attached to an underside of said top element along said imaginary center line of said top element and extending downwardly therefrom for a predetermined length, said substantially vertical support member having two sides and a second predetermined width as measured side to side at a maximum width; and,

(c) a substantially flat horizontal bottom element having a flat bottom view configuration which includes two sides and having a generally trapezoidal shape, and having a third predetermined width as measured side to side at a maximum width at a trapezoidal base;

wherein said first predetermined width is greater than both said second predetermined width and third predetermined width, and wherein said third predetermined width is greater than said second predetermined width, and said

anchoring device is adapted to maintain said top element in a predetermined position during use for joinder of two adjacent boards which have been pre-cut with receiving slots, and to position said bottom element upon a support board which said two adjacent boards rest for attachment of said anchoring device to said support board for anchoring and support of said two adjacent boards.

22. The anchoring device of claim 21 wherein said vertical support member has a plurality of recesses with support columns located therebetween.

23. The anchoring device of claim 21 wherein said device is made of molded plastic material capable of having a metal fastener driven through.

24. A decking system which comprises:

I. a plurality of decking boards, each decking board having a top, a bottom, two sides, and two ends, and at least one groove located along one of said sides, said groove adapted to receive an anchoring device; and

II. an anchoring device which comprises:

(a) a substantially flat horizontal top element having a top view configuration which includes two sides and has a first predetermined width as measured side to side, said first predetermined width being measured a maximum width between said sides, said top element having an imaginary center line;

(b) at least one substantially vertical support member attached to an underside of said top element along said imaginary center line of said top element

and extending downwardly therefrom for a predetermined length, said substantially vertical support member having two sides and a second predetermined width as measured side to side at its maximum width; and

(c) a substantially flat horizontal bottom element having a flat bottom view configuration which includes two sides and having a generally trapezoidal shape, and having a third predetermined width as measured side to side at its maximum width at a trapezoidal base;

wherein said first predetermined width is greater than both said second predetermined width and third predetermined width, and wherein said third predetermined width is greater than said second predetermined width, and said anchoring device is adapted to maintain said top element in a predetermined position during use for joinder of two adjacent boards which have been pre-cut with receiving slots, and to position said bottom element upon a support board which said two adjacent boards rest for attachment of said anchoring device to said support board for anchoring and support of said two adjacent boards.

25. The decking system of claim 24 wherein said vertical support member of said anchoring device has a plurality of recesses with support columns located therebetween.

26. The decking system of claim 24 wherein said device is made of molded plastic material capable of having a metal fastener driven through.

27. The decking system of claim 24 wherein said groove establishes an upper half of each said board above said groove and a lower half of each said board below said groove, wherein said upper half has a greater width than said lower half.

28. The decking system of claim 24 wherein said plurality of decking boards are made of materials selected from the group consisting of synthetic polymers, at least partially foamed synthetic polymers, wood, wood composite, and combinations thereof.

EXHIBIT B

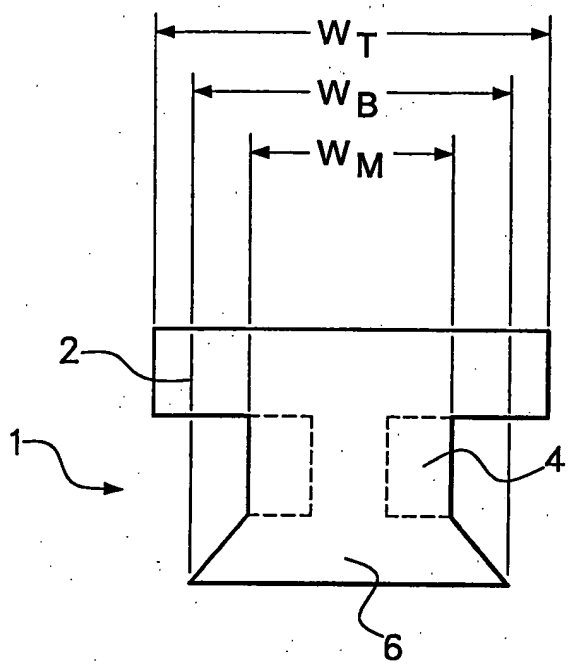

Fig. 4

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CERTIFICATION OF EXPRESS MAIL

The undersigned hereby certifies that this document was delivered to the United States Post Office in Flemington, New Jersey 08822 between 8:30 a.m. and 4:30 p.m. on Friday, April 23, 2004. The undersigned further declares that this Certification is made with the knowledge that willful false statements are punishable by fine or imprisonment, or both, under application sections of United States law, and that willful false statements made before the United States Patent and Trademark Office may jeopardize the validity of the application or issuing patent related thereto.

Lauren Vodopia

EM RRR ER 416519908 US
(HWE-107A)